

MV 95-5

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Business Reorg/Family Sale

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket No. XXXXX
)	IBT# XXXXX
)	Assessment# XXXXX
vs.)	
)	
XXXXXX)	Alfred M. Walter
)	Administrative Law Judge
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, Attorney for XXXXX.

SYNOPSIS: This matter came on for hearing pursuant to the taxpayer's timely protest of Assessment No. XXXXX, issued by the Department on XXXXX, for Use Tax on the transfer of title to a 1989 automobile from XXXXX to XXXXX, the captioned taxpayer. At issue (1) is the question of whether the fact that the sole shareholder of XXXXX being the taxpayer's son, and whether the parties, considering the transaction as a transfer from a child to a parent, properly applied the reduced vehicle use tax rate as provided by 625 ILCS 5/3-1001.

The matter was submitted to the administrative judge for decision on an oral stipulation of the facts.

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the oral stipulations of fact, and the Departments "Notice of Tax Liability and Correction of Return", showing a total liability due and owing in the amount of \$167.30. (Dept.

Grp. Ex. #1).

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence to overcome or rebut the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that XXXXX is subject to the standard rate of tax as imposed by the Motor Vehicle Use Tax Act must stand as a matter of law. In support thereof the following conclusion is made:

ISSUE #1 Notwithstanding the fact that the taxpayer's son owned 100 percent of the stock in the transferor corporation, and assuming, as counsel has argued, that the transferor was a sub chapter S Corporation, the fact remains that the transfer of title to this auto was, factually, from a corporation to an individual, and not from a son to his parent. The taxpayer's argument that the transaction could have been structured to conform to one of the methods allowing the transferee to avail herself of the statutory method of computing the tax at a reduced rate leaves many doubts in my mind. However, assuming that possibility to be true, it does not alter the fact that this transfer of title did not conform to any statutory exemption, and the parties cannot avail themselves of remote possibilities, which never occurred, and which are no longer possible because of the Statute of Limitations.

Alfred M. Walter
Administrative Law Judge